

**REMARKS:**

**REMARKS REGARDING CLAIMS AMENDMENTS:**

The above noted amendments to the claims have been made so that the scope and language of the claims is more precise and clear in defining what the Applicant considers to be the invention.

With regard to claim 1, antecedent basis has been provided for the following: the two ends of the pedal arm; a foot plate which is fixed to a first portion of the pedal arm; and a motion-transmitting element which is firstly jointed to a second portion of the pedal arm. The intention of these amendments is not to change or narrow the scope of the claims in any way. The remaining amendments make clear the applicability of the further limitations recited in the claim to the motion-transmitting element including the limitations of canceled claim 4 which have been incorporated into claim 1.

With regard to claims 2, 3, 5, and 6, the underlined phrase "claim 1" has been deleted along with the transition phrase "further comprising" and has been replaced with the phrase "claim 1, wherein" to bring the claims into a format more generally seen in U.S. practice. The intention of these amendments is not to change or narrow the scope of the claims in any way.

Claim 7 has been canceled without prejudice to future prosecution.

With regard to claim 8, the claim has been amended to correct the typographic error in the first line by replacing "bake" with "brake". Further, claim 8 has been amended to make clear that the brake pedal arm is pivotably connected to the vehicle. The intention of these amendments is not to change or narrow the scope of the claims in any way.

With regard to claims 9 - 17, the dependency of the claims has been corrected. Specifically, the underlined phrase "claim 1" has been deleted along with the transition phrase "further comprising" and has been replaced in claims 9, 10, 11, 14, 15 and 16 with the phrase "claim 8, wherein" to bring the claims into a format more generally seen in U.S. practice. Further, the underlined phrase "claim 1" has been deleted along with the transition phrase "further comprising" and has been replaced in claims 12 and 13 with the phrase "claim 11,

wherein” to bring the claims into a format more generally seen in U.S. practice. The intention of these amendments is not to change or narrow the scope of the claims in any way.

Support for the above amendments to the claims can be found in the original specification as filed.

Applicant also presents new claim 18-20 in this paper to more clearly define the scope of what is considered to be his invention. New claims 18-20 include reference numerals to add clarity to the claims as requested by the Examiner in the Office Action. However, Applicant’s intention is not to narrow or change the scope that these claims would have absent the reference numerals.

Support for new claims 18-20 can be found as follows:

Claim:	Support in Original Specification:
18	Specification paragraphs 0010 – 0014; Figures 1 and 2, and original claims 1-17.
19	Specification paragraphs 0010 – 0014; Figures 1 and 2, and original claims 1-17.
20	Specification paragraphs 0010 – 0014; Figures 1 and 2, and original claims 1-17.

The undersigned submits that no new matter is presented by these amendments.

The claims and amended claims are submitted as being clearly distinct and patentable over the art of record and therefore their entry and allowance by the Examiner is requested.

**IN RESPONSE TO THE OFFICE ACTION:**

**OBJECTIONS TO THE SPECIFICATION AND DRAWINGS**

Both the specification and the drawings have been objected to by the Examiner for failing to include a reference number for the following items referenced in the claims: a vehicle cab (claim 1), a carrying vehicle (claims 7 and 8), and a telescoping member (claims 11-13). Further the terms “an operating device” and “an element” recited in claim 1 have been objected to for lacking antecedence in the specification. Applicants request reconsideration and withdrawal of this objection in view of the following.

A disclosure in an application, to be complete, must contain such description and details as to enable any person skilled in the art or science to which the invention pertains to make and use the invention as of its filing date. *In re Glass*, 492 F.2d 1228, 181 USPQ 31 (CCPA 1974). The specification and drawings are directed to one of skill in the art with all the knowledge of the past concerning how to make and use the claimed invention. *Atmel Corp. v. Information Storage Devices Inc.*, 53 USPQ 2d 1225, 1230-31 (Fed Cir. 1999). As indicated by the Court in that case,

“One skilled in the art knows how to make and use a bolt, a wheel, a gear, as transistor or a known chemical starting material. The specification would be of enormous and unnecessary length if one had to literally reinvent and describe the wheel.” *Id.*

Further as indicated in M.P.E.P. section 608.01(p),

“While the prior art setting may be mentioned in general terms, the essential novelty, the essence of the invention, must be described in such details, including proportions and techniques, where necessary, as to enable those persons skilled in the art to make and utilize the invention.”

An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997). As noted in M.P.E.P. Sec. 2163.03, the case law is clear that there is a strong presumption that an adequate written description of the claimed invention is present in the specification as filed. See also *In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976).

Applicant submits that the present specification, and in particular the drawings comply with the requirements of 35 U.S.C. §112 and 37 C.F.R. 1.83.

Specifically, one of skill in the art should understand and appreciate the location of a vehicle cab may vary depending upon the vehicle in question. Further, the proximate location of foot operated pedals, such as those described and claimed in the present application, is well know even to those not skilled in the art. As such inclusion of such detail in the drawings and specification adds nothing to the novelty and essence of the present invention.

With regard to the carrying vehicle of claims 7 and 8, Applicant has canceled without prejudice claim 7 and amended claim 8 to make clear that the brake pedal arm is pivotably connected to the vehicle.

Finally with regard to the phrase "telescoping member", Applicant would like to draw the Examiner attention to paragraph 0014 of the specification in which it is made clear that the flexible rod (12), preferably a cable, can be interchanged with a rigid telescoping element. Thus one of skill in the art would know what is being referred to in both the claims and the specification.

In view of the above, Applicant requests the reconsideration and withdrawal of the objections to the specification and drawings and indicate the allowability of the application in the next paper from the Office.

FIRST REJECTION UNDER 35 U.S.C. § 112, FIRST PARAGRAPH:

Claims 11-13 were rejected under 35 U.S.C. §112, first paragraph as containing subject matter which was not described in the specification in such away as to reasonably convey to one

skilled in the art that the inventor, at the time of the application, has possession of the claimed invention. In response, Applicant requests that the Examiner reconsider and withdraw the rejection in view of the following:

An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997). The specification and drawings are directed to one of skill in the art with all the knowledge of the past concerning how to make and use the claimed invention. *Atmel Corp. v. Information Storage Devices Inc.*, 53 USPQ 2d 1225, 1230-31 (Fed Cir. 1999). As indicated by the Court in that case,

“One skilled in the art knows how to make and use a bolt, a wheel, a gear, as transistor or a known chemical starting material. The specification would be of enormous and unnecessary length if one had to literally reinvent and describe the wheel.” *Id.*

As noted in M.P.E.P. Sec. 2163.03, the case law is clear that there is a strong presumption that an adequate written description of the claimed invention is present in the specification as filed. See also *In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976).

With regard to the above rejection, Applicant would like to point out that the phrase “telescoping member”, is specifically disclosed in paragraph 0014 of the specification in which it is made clear that the flexible rod (12), preferably a cable, can be interchanged with a rigid telescoping element. Further, the Applicant indicates that upon application of a compressive force, the elements of the telescoping element can be pushed together. One of skill in the art should understand and appreciate that such an action would be similar to that of a cable. Thus one of skill in the art would know what is being referred to in both the claims and the specification.

In view of the above, Applicant requests the reconsideration and withdrawal of the rejection of claims 11-13 under 35 U.S.C. §112, first paragraph and ask that the Examiner indicate the allowance of these claims in the next paper from the Office.

\*\*\*\*\*

FIRST REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH:

Claims 1-17 were rejected under 35 U.S.C. §112, second paragraph as being indefinite and failing to particularly point out the Applicant's invention.

In response, the claims have been amended so as to the specific concerns indicated by the Examiner in the Office Action.

Specifically, claim 1 has been amended to provide antecedent basis for phrase "foot plate". Claims 12 and 13 have been amended so as to be dependent upon claim 11 which provides antecedent basis for the phrase "telescoping member". Claim 7 has been canceled without prejudice. Claim 8 has been amended to make clear the use of the term vehicle.

Applicant submits that the above amendments obviate the above rejections of the claims under 35 U.S.C. §112, second paragraph and thus ask that the Examiner reconsider and withdraw the rejection of the claims and indicate their allowance in the next paper from the Office.

\*\*\*\*\*

SECOND REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH:

Claims 1-17 were rejected under 35 U.S.C. §112, second paragraph as being indefinite and failing to particularly point out the invention. Specifically the Examiner has indicated that the terms "substantially" and "rigidly" in claim 4 are relative terms and thus are indefinite. In response, Applicant requests that the Examiner reconsider and withdraw the rejection in view of the following.

The patent law is well settled that the fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. § 112, second paragraph. *Seattle Box Co., v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984), see also *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d

1565, 1 USPQ2d 1081 (Fed. Cir. 1986) and *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983).

With regard to the Examiner rejection of the term “substantially” Applicant would like to draw the Examiner’s attention to M.P.E.P. Sec. 2173.05(b) where it is specifically noted:

“The term “substantially” is often used in conjunction with another term to describe a particular characteristic of the claimed invention. It is a broad term. *In re Nehrenberg*, 280 F.2d 161, 126 USPQ 383 (CCPA 1960). The court held that the limitation “to substantially increase the efficiency of the compound as a copper extractant” was definite in view of the general guidelines contained in the specification. *In re Mattison*, 509 F.2d 563, 184 USPQ 484 (CCPA 1975). The court held that the limitation “which produces substantially equal E and H plane illumination patterns” was definite because one of ordinary skill in the art would know what was meant by “substantially equal.” *Andrew Corp. v. Gabriel Electronics*, 847 F.2d 819, 6 USPQ2d 2010 (Fed. Cir. 1988).

Applicant submits that the use of the term “substantially constant” would be understood by one of skill in the art to mean that the while the tension force is for the most part constant on the short term, wear and tear on the components overtime may result in a slight change in the tension. Thus Application submits that the “metes and bounds” of what is being claimed is sufficiently definite and in compliance with the requirements of 35 U.S.C. §112, 2<sup>nd</sup> paragraph.

With regard to the use of the term “rigidly” in claims 4 and 5, Applicant submits that in view of the specification as a whole the meaning of the term “rigidly” would be known to one of skill in the art. Specifically, Applicant draws the Examiner’s attention to paragraph 12 in which rigidly is used in relation with a cable that is described as being welded to the lever. This is contrasted with what is shown in Fig. 2 where one end is pivotally joined to the upper end of the pedal arm. Thus Applicant submits that the “metes and bounds” of what is being claimed is sufficiently definite and in compliance with the requirements of 35 U.S.C. §112, 2<sup>nd</sup> paragraph.

With regard to the use of the term “bendable” in claim 10, Applicant submits that in view of the specification as a whole the meaning of the term “bendable” would be known to one of skill

in the art. Applicant draws the Examiner's attention to those portions of the specification in which the problem being solved by the present invention is being disclosed. Specifically, paragraph 13, indicated that the rod (12) is dimensioned so that it can only transmit insignificant compressive force before it bends. This results in the avoidance of foot injury in the event of a collision. Thus Applicant submits that the "metes and bounds" of what is being claimed is sufficiently definite and in compliance with the requirements of 35 U.S.C. §112, 2<sup>nd</sup> paragraph.

Applicant requests reconsideration of the rejection of claims \_\_\_\_\_ under 35 U.S.C. §112, second paragraph and thus ask that the Examiner withdraw his rejection of the claims and indicate their allowance in the next paper from the Office.

\*\*\*\*\*

FIRST REJECTION UNDER 35 U.S.C. § 102:

Claims 1-5, 7-12, 14, 16 and 17 has been rejected under 35 U.S.C. §102 as being anticipated by German OS No. 31 40329 A1 by Josef Bayer (the Bayer reference). In response, Applicant requests that the Examiner reconsider and withdraw the rejection in view of the following.

For there to be anticipation under 35 U.S.C. §102, "each and every element" of the claimed invention must be found either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and references cited therein. See also *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986) ("absence from the reference of any claimed element negates anticipation."); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As pointed out by the court, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of



the invention. *ATD Crop. V. Lydall, Inc.*, 159 F.3d 534, 545, 48 USPQ 2d 1321, 1328 (Fed. Cir. 1998). See also *In re Spada*, 911 F.2d 705, 708, 15 USPQ 2d 1655, 1657 (Fed. Cir. 1990).

In construing the terms of the claims under examination, the Examiner may apply the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). However, claim terms are not to be read in a vacuum, and limitations are to be interpreted in light of the specification in giving them their 'broadest reasonable interpretation'. *In re Marosi*, 710 F.2d 799, 802, 218 USPQ 289, 292 (Fed. Cir. 1983) (emphasis in original). See also *In re Okuzawa*, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976). See also *Manual of Patent Examining Procedure*, 8<sup>th</sup> Ed. §2111. Thus the broadest reasonable interpretation of the claims must be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999)

With regard to the Bayer reference, Fig. 1 clearly shows that the cable 10 is pivotably joined at one end to the lever 18. The cable joint at the opposite end is only schematically illustrated, but there is no reason why a person skilled in the art should not take it for granted that also the joint between the cable and the lever 4 is pivotable because there is no indication or suggestion to the contrary. Further, one of skill in the art should appreciate that it is common practice to arrange pivotable joints at both ends of a control cable of the type shown in the Bayer reference.

In view of the above, Applicant requests the reconsideration and withdrawal of the rejection of claims 1-5, 7-12, 14, 16 and 17 under 35 U.S.C. §102 and ask that the Examiner indicate the allowance of these claims in the next paper from the Office.

\*\*\*\*\*

SECOND REJECTION UNDER 35 U.S.C. § 102:

Claims 1 and 6 have been rejected under 35 U.S.C. §102 as being anticipated by French Application No. 2, 555, 333 by Jean-Claude Raynaud (the Jean '333 reference).

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

The applicable case law for a rejection under 35 U.S.C. §102 has been discussed above in the response to the first rejection under 35 U.S.C. §102. In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

With regard to the Jean '333 reference, Fig. 1 clearly shows that the cable 7 is pivotably joined at one end to the lever 1. The cable joint at the opposite end is connected to a wall 11 by a wire nut 13. Further, one of skill in the art should appreciate that it is the shortening and lengthening of the cable 7, that causes the motion of the lever 2 to act on the brake unit 3.

In contrast, as is positively recited in the claims, the relative distance between lever arm and the pedal arm arms is maintained at least substantially constant when there is a tensile force on the motion transmitting element. When a compressive force is applied to the motion transmitting element, such as during a collision, then the distance changes.

Given the above, Applicant requests that the rejection of claims 1 and 6 under 35 U.S.C. §102 be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

\*\*\*\*\*

FIRST REJECTION UNDER 35 U.S.C. § 103:

Claims 13 and 15 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable given by German OS No. 31 40329 A1 by Josef Bayer (the Bayer reference) or alternatively the French Application No. 2, 555, 333 by Jean-Claude Raynaud (the Jean '333 reference).

Applicants request that the Examiner reconsider and withdraw the above rejection of the claims in view of the following.

A determination under 35 U.S.C. §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. *In re Mayne*, 104 F.3d 1339, 1341, 41 USPQ 2d 1451, 1453 (Fed. Cir. 1997). An obviousness determination is based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed

invention and the prior art; and (4) objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), see also *Robotic Vision Sys., Inc. v. View Eng'g Inc.*, 189 F.3d 1370, 1376, 51 USPQ 2d 1948, 1953 (Fed. Cir. 1999)

In line with this standard, case law provides that "the consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art." *In re Dow Chem.*, 837 F.2d 469, 473, 5 USPQ 2d 1529, 1531 (Fed. Cir. 1988). The first requirement is that a showing of a suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." *In re Dembiczak*, 175 F.3d 994, 1000, 50 USPQ2d 1614, 1617. The second requirement is that the ultimate determination of obviousness must be based on a reasonable expectation of success. *In re O'Farrell*, 853 F.2d 894, 903-904, 7 USPQ 2d 1673, 1681 (Fed. Cir. 1988); see also *In re Longi*, 759 F.2d 887, 897, 225 USPQ 645, 651-52 (Fed. Cir. 1985). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

The examiner bears the burden of establishing a prima facie case of obviousness. *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995). The burden to rebut a rejection of obviousness does not arise until a prima facie case has been established. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993). Only if the burden of establishing a prima facie case is met does the burden of coming forward with rebuttal argument or evidence shift to the applicant. *In re Deuel*, 51 F.3d 1552, 1553, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995), see also *Ex parte Obukowicz*, 27 USPQ 2d 1063, 1065 (B.P.A.I. 1992).

Applicant submits that nothing in the art of record teaches or suggests the present invention. As positively recited in claims 13 and 15 the present invention utilizes a telescoping

member is welded at least at one end thereof between the brake pedal arm and the pedal actuated operating device (Claim 13) or more generally one end of the motion-transmitting element is welded at least at one end thereof between the brake pedal arm and the pedal actuated operating device. (Claim 15)

With regard to claim 13, Applicant submits that figures in these references utilized as the basis of this rejection clearly show the use of cables to connect the components. Nowhere is there any indication that a telescoping rod may be used in such an application. Thus Applicants submit that the subject matter of claim 13 is not disclosed, taught or suggested to one of skill in the art.

With regard to claim 15, Applicant submits that the Bayer reference, Fig. 1 clearly shows that the cable 10 is pivotably joined at one end to the lever 18. The cable joint at the opposite end is only schematically illustrated, but there is no reason why a person skilled in the art should not take it for granted that also the joint between the cable and the lever 4 is pivotable because there is no indication or suggestion to the contrary. Further, one of skill in the art should appreciate that it is common practice to arrange pivotable joints at both ends of a control cable of the type shown in the Bayer reference.

With regard to the Jean '333 reference, Fig. 1 clearly shows that the cable 7 is pivotably joined at one end to the lever 1. The cable joint at the opposite end is connected to a wall 11 by a wire nut 13. Further, one of skill in the art should appreciate that it is the shortening and lengthening of the cable 7, that causes the motion of the lever 2 to act on the brake unit 3.

In contrast, as is positively recited in the claims, the relative distance between lever arm and the pedal arm arms is maintained at least substantially constant when there is a tensile force on the motion transmitting element. When a compressive force is applied to the motion transmitting element, such as during a collision, then the distance changes.

Given the above, Applicant requests that the rejection of claims 13 and 15 under 35 U.S.C. §103(a) be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

\*\*\*\*\*



Serial No.: 09/681,441  
Confirmation No.: 4762  
Applicant: FALL, Peter  
Atty. Ref.: 07574.0031.PCUS00

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 08-3038, referencing Order No. 07574.0031.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner should directly contact the undersigned by phone to further the discussion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tracy W. Druce".

Tracy W. Druce

Patent Attorney

Reg. No. 35,493

Tel. 202.383.7398

Date: 6 March '03